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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965.

No. 387

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO,
Petitioner,

vs.

HOOSIER CARDINAL CORPORATION,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENT.

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BRIEF FOR THE RESPONDENT.

OPINIONS BELOW.

The opinion of the District Court was filed on May 12, 1964 and appears at R. 12. The opinion of the Court of Appeals for the Seventh Circuit, issued on June 4, 1965, is reported in 346 F. 2d 242, and appears at R. 24.

JURISDICTION.

The opinion and judgment of the United States Court of Appeals for the Seventh Circuit, affirming the District Court's dismissal of Petitioner's suit, were entered on June 4, 1965. The jurisdiction of this Court is invoked

under 28 U. S. C. Sec. 1254 (1). The petition for certiorari was filed on July 22, 1965 and was granted on October 11, 1965. 86 Sup. Ct. 87.

QUESTIONS PRESENTED.

1. Whether or not the court below had jurisdiction under national standards applicable to suits brought under Section 301 of the Labor Management Relations Act.

2. Whether or not the Court in this case should abandon its well established policy, which dictates that state statutes of limitation are to apply in actions brought under federal statutes which do not contain periods of limitation.

3. Whether or not, assuming a need for a national formulation of a limitations period for Section 301 actions, this Court should formulate a limitations standard analogous to the six month period provided in Section 10(b) of the Labor Management Relations Act.

4. Whether or not the Court should, on the facts before it in this case, formulate a national standard of tolling of the applicable limitation periods under Section 301 actions.

5. Whether or not the action involved here is exclusively on a written contract so as to require the application of a twenty year Indiana statute of limitations instead of the Indiana six year statute of limitations applicable to contracts not in writing.

STATUTES INVOLVED.

The Petitioner has correctly set out Section 301 of the Labor Management Relations Act in its Brief. It has, however, omitted certain pertinent and applicable Indiana statutes relied upon by the Petitioner in the District Court, some of which were specifically pleaded and relied upon in Paragraph 10 of the complaint filed in this action and involved the Indiana statutes for penalties, liquidated dam-

ages and attorney fees (R. 5). The Indiana statutes involved herein are as follows: Sections 40-102; 40-104; 40-105 of Burns' Indiana Statutes Annotated, 1933, 1952 Replacement Volume (Act of the General Assembly for the State of Indiana for the year 1911, Chapter 68, Sections 1 and 4 of said General Assembly for the year 1933, Chapter 47, Section 2); Sections 2-601; 2-602 of Burns' Indiana Statutes, Annotated, 1933, 1965 Pocket Supplement to 1946 Replacement Volume (Act of the General Assembly for the State of Indiana for the year 1881 (Spec. Sess.), Chapter 38, S. 37, p. 240; 1951, Ch. 301, S. 1, p. 999 and Act of said General Assembly for the year 1881 (Spec. Sess.), Chapter 38, S. 38, p. 240; 1951, Ch. 301, S. 2, p. 999); and are set forth in Respondent's Appendix, infra.

STATEMENT.

Petitioner's statement of the case is substantially correct. However, Petitioner has improperly included in its statement of the case the recitation of the attempted class action of *Johnson* v. *Hoosier Cardinal Corporation,* No. C-7824, Superior Court of Vanderburgh County, Indiana (Pet. App. p. 1) in which certain of the employees of the Respondent filed, on behalf of themselves and for other of its employees in the Superior Court of Vanderburgh County, Indiana, a class action seeking to recover vacation pay allegedly due from the Respondent, together with statutory penalties and attorney fees provided under the Indiana wage claim statutes. These are the same claims which the Petitioner is seeking to recover by the complaint filed herein. The state court action and proceedings are not a part of the record in this Court, were not a part of the record in the District Court or the Court of Appeals below, and the arguments which are made in this Court with

reference thereto were not made in the District Court or in the Court of Appeals below.

The state court action was affirmed by the Indiana Appellate Court in *Johnson* v. *Hoosier Cardinal Corporation*, 134 Ind. App. 477, 189 N. E. 2d 592, for the reason that plaintiff's counsel had not properly prepared the brief in order to submit the question of the propriety of the lower court in dismissing plaintiff's action.

SUMMARY OF ARGUMENT.

It is Respondent company's position that the courts below were clearly correct in coming to the conclusion that Petitioner, the Union, could not circumvent the applications of an Indiana statute of limitations of six years concerning contract not in writing by simple expedient of characterizing its suit filed in the District Court as one under Section 301 of the Labor Management Relations Act. Petitioner has raised essentially untenable issues by resorting to two cases decided by this court, *Smith* v. *Evening News Association*, 371 U. S. 195 and *Burnett* v. *New York Central R. R. Co.*, 380 U. S. 424, as authority for a veritable code of substantive law at the heart of which is the assumption that not only no rules now exist concerning the issues raised by the record in this case (contrary to fact), but, in addition, that on the basis of this erroneous premise this court should create national standards concerning period of limitations and principles of tolling applicable to actions brought under Section 301 of the Labor Management Relations Act. This, even though in many analogous situations, under congressional enactments without such periods this Court has declined to make such formulations.

Respondent has met these issues as follows:

1. Point I of Respondent's Brief deals with three issues

questioning the jurisdiction of the federal courts in actions of this type when brought under Section 301. Under its first point, Respondent questions the power of the courts below assuming jurisdiction over a cause of action having its substantive origin under a state wage claim statute when it is the proper interpretation of Article III of the Constitution that federal courts do not have jurisdiction to decide a question involving only state substantive law. The second issue concerns the question of whether or not, under the facts in the record, the Petitioner has any legal standing to bring this action under Section 301 where it is difficult to discern the legal nature of the interest it would have, given success, on the trial court's granting full recovery in this action. Respondent maintains Petitioner does not have this right. Finally, it is doubtful that Petitioner, granting standing and an assertion of some federal substantive right from its pleadings, has satisfied a condition precedent to the assertion of jurisdiction in cases of this type, i.e., exhausting its contractual remedies under the contract once existing between it and Respondent, *Republic Steel Corp.* v. *Maddox*, 379 U. S. 650.

2. Point II of Respondent's Brief deals with Petitioner's disregard for the national rule already present in the federal court system for resolving the problem raised by the existence of a federal statutory enactment where Congress fails to include or incorporate any applicable period of limitations. Such enactments covering a wide range of legislation have traditionally been governed by the applicable state period of limitations and the definition given these periods by the local courts. The reasoning behind this rule is to the effect that since Congress is silent the federal courts as a means of avoiding the anomaly of a legal right with no period of limitations, apply state law. In addition the courts infer that where Congress is silent, an intent was manifested to apply local law. Finally the